

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Modesto, California

August 14, 2000 at 9:00 a.m.

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1. 98-92116-A-7 MARTIN & MAY ORTEGON CONT. HEARING ON MOTION TO
DN #1 AVOID JUDICIAL LIEN ON
MARTIN & MAY ORTEGON VS. EXEMPT PROPERTY
5/1/00 [23]

SAN JOAQUIN LUMBER CO.

Tentative Ruling: Subject to no objection being filed to the amended exemptions on or before August 14, 2000, the motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$155,883.00. The debtor has an available exemption of \$1,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Although there is no equity after subtracting the unavoidable liens from the value of the property, the judicial lien is nonetheless avoidable because the debtor has exempted the property. See Higgins v. Household Finance Corp. (In re Higgins), 201 B.R. 965 (B.A.P. 9th Cir. 1996).

2. 98-92116-A-7 MARTIN & MAY ORTEGON CONT. HEARING ON MOTION TO
DN #2 AVOID JUDICIAL LIEN ON
MARTIN & MAY ORTEGON VS. EXEMPT PROPERTY
5/1/00 [24]

CLEMENTS ENTERPRISES INC.

Tentative Ruling: Subject to no objection being filed to the amended exemptions on or before August 14, 2000, the motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$155,883.00. The debtor has an available exemption of \$1,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Although there is no equity after subtracting the unavoidable liens from the value of the property, the judicial lien is nonetheless avoidable because the debtor has exempted the property. See Higgins v. Household Finance Corp. (In re Higgins), 201 B.R. 965 (B.A.P. 9th Cir. 1996).

3. 98-92116-A-7 MARTIN & MAY ORTEGON CONT. HEARING ON MOTION TO

DN #3
MARTIN & MAY ORTEGON VS.

AVOID JUDICIAL LIEN ON
EXEMPT PROPERTY
5/1/00 [25]

T.A. ROSS COLLECTIONS

Tentative Ruling: Subject to no objection being filed to the amended exemptions on or before August 14, 2000, the motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$155,883.00. The debtor has an available exemption of \$1,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Although there is no equity after subtracting the unavoidable liens from the value of the property, the judicial lien is nonetheless avoidable because the debtor has exempted the property. See Higgins v. Household Finance Corp. (In re Higgins), 201 B.R. 965 (B.A.P. 9th Cir. 1996).

4. 98-92116-A-7 MARTIN & MAY ORTEGON
DN #4
MARTIN & MAY ORTEGON VS.

CONT. HEARING ON MOTION TO
AVOID JUDICIAL LIEN ON
EXEMPT PROPERTY
5/1/00 [26]

CITY OF STOCKTON

Tentative Ruling: Subject to no objection being filed to the amended exemptions on or before August 14, 2000, the motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$155,883.00. The debtor has an available exemption of \$1,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Although there is no equity after subtracting the unavoidable liens from the value of the property, the judicial lien is nonetheless avoidable because the debtor has exempted the property. See Higgins v. Household Finance Corp. (In re Higgins), 201 B.R. 965 (B.A.P. 9th Cir. 1996).

5. 98-92116-A-7 MARTIN & MAY ORTEGON
DN #5
MARTIN & MAY ORTEGON VS.

CONT. HEARING ON MOTION TO
AVOID JUDICIAL LIEN ON
EXEMPT PROPERTY
5/1/00 [27]

JAMES V. GATTI, DBA GATIO
ELECTRIC

Tentative Ruling: Subject to no objection being filed to the amended exemptions on or before August 14, 2000, the motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$155,883.00. The debtor has an available exemption of \$1,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical

formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Although there is no equity after subtracting the unavoidable liens from the value of the property, the judicial lien is nonetheless avoidable because the debtor has exempted the property. See Higgins v. Household Finance Corp. (In re Higgins), 201 B.R. 965 (B.A.P. 9th Cir. 1996).

6. 98-92116-A-7 MARTIN & MAY ORTEGON CONT. HEARING ON MOTION TO
DN #6 AVOID JUDICIAL LIEN ON
MARTIN & MAY ORTEGON VS. EXEMPT PROPERTY
5/1/00 [28]

AVON & FLOSSIE DANIEL, DBA PAT'S
LIQUORS AND DELI

Tentative Ruling: Subject to no objection being filed to the amended exemptions on or before August 14, 2000, the motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$155,883.00. The debtor has an available exemption of \$1,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Although there is no equity after subtracting the unavoidable liens from the value of the property, the judicial lien is nonetheless avoidable because the debtor has exempted the property. See Higgins v. Household Finance Corp. (In re Higgins), 201 B.R. 965 (B.A.P. 9th Cir. 1996).

7. 98-92116-A-7 MARTIN & MAY ORTEGON CONT. HEARING ON MOTION TO
DN #7 AVOID JUDICIAL LIEN ON
MARTIN & MAY ORTEGON VS. EXEMPT PROPERTY
5/1/00 [29]

PAUL & JEANNE PEARSON, DBA
PEARSONS CONCRETE

Tentative Ruling: Subject to no objection being filed to the amended exemptions on or before August 14, 2000, the motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$155,883.00. The debtor has an available exemption of \$1,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Although there is no equity after subtracting the unavoidable liens from the value of the property, the judicial lien is nonetheless avoidable because the debtor has exempted the property. See Higgins v. Household Finance Corp. (In re Higgins), 201 B.R. 965 (B.A.P. 9th Cir. 1996).

8. 98-92116-A-7 MARTIN & MAY ORTEGON CONT. HEARING ON MOTION TO
DN #8 AVOID JUDICIAL LIEN ON
MARTIN & MAY ORTEGON VS. EXEMPT PROPERTY

DELTA GLASS CO.

Tentative Ruling: Subject to no objection being filed to the amended exemptions on or before August 14, 2000, the motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$\$155,883.00. The debtor has an available exemption of \$1,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Although there is no equity after subtracting the unavoidable liens from the value of the property, the judicial lien is nonetheless avoidable because the debtor has exempted the property. See Higgins v. Household Finance Corp. (In re Higgins), 201 B.R. 965 (B.A.P. 9th Cir. 1996).

9. 98-92116-A-7 MARTIN & MAY ORTEGON
DN #9
MARTIN & MAY ORTEGON VS.

CONT. HEARING ON MOTION TO
AVOID JUDICIAL LIEN ON
EXEMPT PROPERTY
5/1/00 [31]

DELTA GLASS CO.

Tentative Ruling: Subject to no objection being filed to the amended exemptions on or before August 14, 2000, the motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$\$155,883.00. The debtor has an available exemption of \$1,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Although there is no equity after subtracting the unavoidable liens from the value of the property, the judicial lien is nonetheless avoidable because the debtor has exempted the property. See Higgins v. Household Finance Corp. (In re Higgins), 201 B.R. 965 (B.A.P. 9th Cir. 1996).

10. 98-92116-A-7 MARTIN & MAY ORTEGON
DN #10
MARTIN & MAY ORTEGON VS.

CONT. HEARING ON MOTION TO
AVOID JUDICIAL LIEN ON
EXEMPT PROPERTY
5/1/00 [32]

COUNTY OF STANISLAUS

Tentative Ruling: Subject to no objection being filed to the amended exemptions on or before August 14, 2000, the motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$150,000 as of the date of the petition. The unavoidable liens total \$155,883.00. The debtor has an available exemption of \$1,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Although there is no equity after subtracting the unavoidable liens from the value of the property, the judicial lien is nonetheless avoidable because the debtor has exempted the property. See Higgins v. Household Finance Corp. (In re Higgins), 201 B.R. 965 (B.A.P. 9th Cir. 1996).

11. 00-92018-A-7 1ST PRIORITY TRUCKWAYS, INC.
DGN #1
FORD MOTOR CREDIT COMPANY VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/21/00 [21]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$23,425 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$54,317.27. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

12. 00-92019-A-7 JOHN & JENA RYAN
DMM #1
BANK OF THE WEST VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/20/00 [7]

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is

awarded. The subject property has a value of \$18,555 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$26,607.40. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

13. 00-91924-A-7 ANTHONY & KATHLEEN LUCIDO HEARING ON MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
BANK OF THE WEST VS. PART II
7/20/00 [22]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$26,345 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$35,654.68. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

14. 00-92124-A-7 LUCIA ARANDA HEARING ON MOTION FOR
RS #1 RELIEF FROM AUTOMATIC STAY
TRANSOUTH FINANCIAL CORP. VS. 7/24/00 [8]

Final Ruling: There are several service defects. First, the motion was served on the Sacramento Office of the U.S. Trustee instead of Fresno Office. Second, even if service on this office of the U.S. Trustee was acceptable, it was served on the wrong address. The correct address in Sacramento is 501 I (as in "Eye") Street not 501 First Street. Third, the proof of service indicates that the motion was served but not the notice of hearing and supporting declaration. Therefore, the motion is denied without prejudice.

15. 00-91928-A-7 ALEJANDRO & MARIA RENTERIA HEARING ON MOTION FOR
MWF #1 RELIEF FROM AUTOMATIC STAY
HOMESIDE LENDING, INC. VS. PART II
7/19/00 [14]

Tentative Ruling: The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$100,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$83,366.61. After considering the junior deed of trust of \$24,654, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Fees and costs of \$675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

16. 00-91932-A-7 YOUSIF & MARIAM HAMZA CONT. HEARING ON MOTION FOR
CWN #1 RELIEF FROM AUTOMATIC STAY
CHASE MANHATTAN MORTGAGE CORP. VS. PART II
7/10/00 [7]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$130,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$122,512.56. After considering the junior deeds of trust securing total obligations of \$56,145, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Fees and costs of \$675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). **Note: The notice of the hearing on the motion references Local Rule 401, Part II. This court's Local Rules were amended many years ago to make the numbering more consistent with the national bankruptcy rules. The correct citation is Local Bankruptcy Rule 4001-1, Part II. Copies of the current rules and forms can be downloaded from the court's web page, www.caeb.uscourts.gov.**

17. 00-91736-A-7 JOSE R. FRANCO, SR. &
CD #1 DEMETRIA FRANCO
BENEFICIAL CALIFORNIA INC. VS.

CONT. HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
6/28/00 [11]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$72,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$106,117.70. After considering all other liens and security interests, if any, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

18. 00-91736-A-7 JOSE R. FRANCO, SR. &
CD #2 DEMETRIA FRANCO
BENEFICIAL CALIFORNIA INC. VS.

CONT. HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
6/28/00 [13]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$72,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$93,062.50. After considering all other liens and security interests, if any, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

19. 00-91736-A-7 JOSE R. FRANCO, SR. &
SPS #1 DEMETRIA FRANCO
AMERICAN GENERAL FINANCE VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/24/00 [17]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$132,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$6,474.44. After considering the senior deed of trust securing a claim of \$129,000, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

20. 00-91736-A-7 JOSE R. FRANCO, SR. & HEARING ON MOTION FOR
SPS #1 DEMETRIA FRANCO RELIEF FROM AUTOMATIC STAY
UNITED COMPANIES LENDING CORP. VS. PART II
7/24/00 [21]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$130,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$137,227.84. After considering all other liens and security interests, if any, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

Note: Counsel has filed two different motions bearing the same motion control number for two different creditors. To further confuse the picture, on this motion, the Information Sheet had a motion control number that did not correspond to the number on the motion. A unique motion control must be placed on each motion and care taken to be sure that number appears on all papers filed in connection with each motion.

21. 00-92345-A-7 ROBERT WILLIAM LOWE CONT. HEARING ON MOTION FOR
CWN #1 RELIEF FROM AUTOMATIC STAY
FAIRBANKS CAPITAL CORPORATION VS. PART II

Tentative Ruling: The motion is denied. The debtor's schedules reveal that he claims no interest in the subject real property. If that is so, there is no automatic stay. If it is not so, the motion must be accompanied by evidence justifying relief pursuant to 11 U.S.C. § 362(d). There is no such evidence. The only facts proven in the motion is that the movant is owed \$35,455.42, this is secured by the subject property, and the debtor does not claim an interest in the subject property. This proves only that there was no reason to make the motion. All fees and costs are denied.

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| 22. | 98-94549-A-7 RONALD & RHONDA GILBERT KBR #1 MATRIX FINANCIAL SERVICES CORP. & HARBOR FINANCIAL MORT. CORP. VS. | HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY ETC PART II 7/21/00 [54] |
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Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$108,000 (the court takes judicial notice of Schedule A which admits this value) and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$123,289.13. After considering all other liens and security interests, if any, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). **Note: The notice of the hearing on the motion references Local Rule 401, Part II. This court's Local Rules were amended many years ago to make the numbering more consistent with the national bankruptcy rules. The correct citation is Local Bankruptcy Rule 4001-1, Part II. Additionally, contrary to the notice of hearing, the time for the debtor and/or trustee to file opposition is not five days prior to the hearing, it is five business days prior to the hearing. Local Bankruptcy Rules 4001-1, Part II(a) and 9014-1, Part II(c). Counsel is also using a Relief from Stay Information Sheet that has been superceded. Copies of the current rules and forms can be downloaded from the court's web page, www.caeb.uscourts.gov.**

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| 23. | 00-92257-A-7 MATTHEW & PAMELA ROSEN ASW #1 FIRST HORIZON HOME LOAN CORP. VS. | HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 7/21/00 [8] |
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Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this

local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$125,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$105,472. After considering the junior deed of trust securing a claim of \$39,704, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Fees and costs of \$675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

24. 00-91269-A-7 ANN M. CANNON
CD #1
BENEFICIAL CALIFORNIA, INC. VS.

CONT. HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/3/00 [21]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$80,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$71,974.41. After considering the senior and junior liens totaling over \$8,000, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

25. 00-91772-A-7 GARY HOPKINSON II &
DMM #1 JILL HOPKINSON
BANK OF THE WEST VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/20/00 [7]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be

resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$26,500 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$27,343.04. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

26. 00-92087-A-7 DAMON CARL, SR. HEARING ON MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO FINANCIAL PART III
ACCEPTANCE VS. 7/26/00 [8]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part III. If the debtor, the trustee, or any other party in interest appears in opposition to the motion, the court will assign a briefing schedule and a final hearing date and time. If no one appears in opposition to the motion, the court will take up the merits of the motion.

27. 99-91489-A-7 RAFAEL & CARMEN ANAYA HEARING ON MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
BANK OF THE WEST VS. PART II
7/21/00 [29]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded. The subject property has a value of \$7,787.50 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$10,405.16. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

28. 00-91899-A-7 ANGELO ENRICO QUEIROLO HEARING ON MOTION FOR
DMM #1 RELIEF FROM AUTOMATIC STAY
BANK OF THE WEST VS. PART II

7/24/00 [7]

Final Ruling: There is a service defect. The notice of hearing states that the hearing will be at the Fresno Division of this court. This is incorrect. The motion is denied without prejudice.